

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Northern Division)**

**XEROX CORPORATION**

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**Plaintiff**

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v.

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**PHOENIX COLOR CORPORATION, *et al***

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**Defendants**

**Civil Action No.:**

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**WDQ 02 CV 1734**

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**PLAINTIFF'S MOTION TO STRIKE PHOENIX COLOR'S AMENDED ANSWER  
AND COUNTERCLAIM**

Xerox Corporation ("Xerox"), Plaintiff, by and through its attorneys, Sidney S. Friedman, Rosemary E. Allulis, and Weinstock, Friedman & Friedman, P.A., and pursuant to the Federal Rules of Civil Procedure, Rules 13 and 15, and Local Rule 103, hereby files this Motion to Strike, and for cause states:

1. On or about April 7, 2003, Defendant Phoenix Color Corporation filed an Amended Answer and Counterclaim to Xerox's Amended Complaint.
2. The Amended Answer is untimely, and fails to comport with the Federal Rules of Civil Procedure, Rule 15(a), and Local Rule 103.6.
3. Plaintiff has not received any notice of a motion requesting leave of court to file an amended pleading as is required under Rule 15(d).
4. Likewise, Plaintiff has not received copies of the pleadings, including a red-lined copy, as is required under Local Rule 103.6.
5. The Counterclaim is untimely, and fails to comport with the Federal Rules of Civil Procedure, Rule 13(e).
6. Although Defendant does have a pending Motion for Leave to File

Counterclaim, Plaintiff has not received any notification from the Court that Defendant's motion was granted, and therefore, Defendant's filing was premature.

WHEREFORE, Xerox Corporation, Plaintiff respectfully requests this Honorable Court to:

- A. Strike Defendant's Amended Answer as being untimely filed, and for failing to comport with the Federal Rules of Civil Procedure, Rule 15(a), and Local Rule 103.6.
- B. Strike Defendant's Counterclaim as being untimely filed, and for failing to comport with the Federal Rules of Civil Procedure, Rule 13(e).

Respectfully Submitted,

WEINSTOCK, FRIEDMAN  
& FRIEDMAN, P.A.

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Sidney S. Friedman

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Rosemary E. Allulis  
Attorneys for Plaintiff  
Executive Centre  
4 Reservoir Circle  
Baltimore, Maryland 21208-7301  
(410) 559-9000

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S  
MOTION TO STRIKE PHOENIX COLOR'S AMENDED ANSWER AND  
COUNTERCLAIM**

**I. Defendant's Amended Answer Fails to Comport With the Federal Rules of Civil  
Procedure, Rule 15(d), and Local Rule 103.6.**

Pursuant to the Federal Rules of Civil Procedure, Rule 15, and under the present circumstances, a party may amend the party's pleading...at any time within 20 days after it has been served." Fed. R. Civ. Pro. 15(a). "Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party...." *Id.* Additionally, the Local Rules set forth requirements for amendments of pleadings. Pursuant to Local Rule 103.6, a party filing an amended pleading "shall" provide a red-lined, or otherwise marked copy of the original pleading clearly indicating the stricken material. Despite Defendant's footnote in its Reply to Xerox's Oppositions to Motion for Leave to File Counterclaim and to Discovery-Related Motions, that the redlined copy was filed, Plaintiff did not receive said

copy.

While Defendant filed its Amended Answer, Plaintiff is not aware of any motion granted by the Court allowing Defendant to file an amended pleading. Rule 15(a) specifically requires a party seeking to amend a pleading in this manner, to do so only by leave of court. For this reason alone, Defendant's Amended Answer should be stricken for failure to comply with the Federal Rules of Civil Procedure. Likewise, the Local Rules require a party to submit a red-lined or marked copy of the original pleading, clearly showing the stricken material. Local Rule 103.6. Plaintiff has not received such a pleading. It is noteworthy that in the footnote to Defendant's Reply Memorandum, it indicated it was filing concurrently a "proposed amended answer". The Amended Answer filed by Defendant is entitled just that, and nowhere is there an indication that it is merely "proposed". Regardless, Plaintiff is not aware of any provisions within the Federal Rules allowing for "proposed" amended pleadings. For these reasons, Defendant's Amended Answer should be stricken.

**II. Defendant's Counterclaim Fails to Comport With the Federal Rules of Civil Procedure, Rule 13(e)**

Pursuant to the Federal Rules of Civil Procedure, Rule 13(e), if a counterclaim matures or is acquired after a party has pleaded, a party may file a counterclaim "...with the permission of the court...." Fed. R. Civ. Pro. 13(e). Although Defendant does have a Motion for Leave to File Counterclaim pending before this Court, as of the date of the filing of this Motion, the Court has not yet ruled upon Defendant's Motion. Given this, Defendant's Counterclaim, filed without leave of court, is premature, and should be stricken.

**III. Conclusion**

For the foregoing reasons, Defendant's Amended Answer and Counterclaim should be stricken for failing to comport with the Federal Rules of Civil Procedure.

**Points and Authorities**

1. Federal Rules of Civil Procedure, Rule 13
2. Federal Rules of Civil Procedure, Rule 15
3. Local Rule 103.6

Respectfully Submitted,

WEINSTOCK, FRIEDMAN  
& FRIEDMAN, P.A.

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Sidney S. Friedman

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**ORDER**

Upon consideration of Defendant's Motion to Strike Amended Answer, and Counterclaim, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2003, hereby

**ORDERED:** That Plaintiff's Motion to Strike is **GRANTED**; and it is further

**ORDERED:** That Defendant's Amended Answer is stricken; and it is further

**ORDERED:** That Defendant's Counterclaim is stricken.

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Date

Judge,  
United States District Court  
for the District of Maryland

cc: Sidney S. Friedman  
Weinstock, Friedman & Friedman, P.A.  
Executive Centre  
4 Reservoir Circle  
Baltimore, Maryland 21208-7301

John R. Wellschlager  
Robert A. Gaumont  
Piper Rudnick, LLP  
6225 Smith Avenue  
Baltimore, Maryland 21209

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, a copy of the foregoing Plaintiff's Motion to Strike Amended Answer and Counterclaim and a proposed Order, were electronically filed, and mailed first class mail, postage pre-paid to: John R. Wellschlager, Robert A. Gaumont, Piper Rudnick, LLP, 6225 Smith Avenue, Baltimore, Maryland 21209.

WEINSTOCK, FRIEDMAN  
& FRIEDMAN, P.A.

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Sidney S. Friedman

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